

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2718

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Solid Waste Disposal Act to limit the liability under those Acts of lenders and fiduciaries.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Mr. COX introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Solid Waste Disposal Act to limit the liability under those Acts of lenders and fiduciaries.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. LIMITATION OF LIABILITY UNDER THE COM-**  
4                               **PREHENSIVE ENVIRONMENTAL RESPONSE,**  
5                               **COMPENSATION, AND LIABILITY ACT OF 1980.**

6       (a) EXCLUSION FROM DEFINITION OF OWNER AND  
7       OPERATOR.—Section 101(20) of the Comprehensive Envi-

1 ronmental Response, Compensation, and Liability Act of  
2 1980 (42 U.S.C. 9601(20)) is amended—

3 (1) by striking out the last sentence of subpara-  
4 graph (A); and

5 (2) by adding at the end the following new sub-  
6 paragraphs:

7 “(E)(i) The term ‘owner or operator’ does  
8 not include a person whose interest in a vessel  
9 or facility arises in connection with a secured fi-  
10 nancing arrangement or who acquires such in-  
11 terest as a result of foreclosing upon a vessel or  
12 facility.

13 “(ii) This subparagraph does not exempt  
14 from liability any person described in clause (i)  
15 who willfully, knowingly, or recklessly causes or  
16 exacerbates a release or threatened release of a  
17 hazardous substance, and such a person shall  
18 be liable for response costs to the extent that  
19 the release or threatened release is attributable  
20 to the person’s activities.

21 “(F)(i) The term ‘owner or operator’ does  
22 not include—

23 “(I) a fiduciary,

24 “(II) a trustee, pursuant to an inden-  
25 ture agreement or similar financing agree-

1           ment, for debt securities, certificates of in-  
2           terest, or participation in any such debt se-  
3           curities, or

4                   “(III) any successor to a fiduciary or  
5           trustee described in subclause (II),

6           which acquires an interest in or control of a  
7           vessel or facility for purposes of administering  
8           an estate or trust. This subparagraph does not  
9           exempt a fiduciary or trustee whose appoint-  
10          ment is solely an attempt to evade liability  
11          under this Act.

12                   “(ii) This subparagraph does not exempt  
13          from liability a person described in clause (i)  
14          who willfully, knowingly, or recklessly causes or  
15          exacerbates a release or threatened release of a  
16          hazardous substance, and such a person shall  
17          be liable for response costs to the extent that  
18          the release or threatened release is attributable  
19          to the person’s activities.

20                   “(iii) Nothing in this subparagraph shall  
21          prevent claims against the assets that con-  
22          stitute the estate held by the fiduciary or trust-  
23          ee or the filing of actions against the fiduciary  
24          or trustee in its representative capacity.”.

1 (b) SECTION 107 LIABILITY.—Section 107(a) of such  
2 Act is amended by adding at the end the following sen-  
3 tence: “The liability established by subparagraphs (E)(ii)  
4 and (F)(ii) of section 101(20) shall be deemed to arise  
5 under this subsection.”.

6 **SEC. 2. LIMITATION OF LIABILITY UNDER SOLID WASTE**  
7 **DISPOSAL ACT.**

8 The Solid Waste Disposal Act (42 U.S.C. 6901 et  
9 seq.) is amended—

10 (1) by adding at the end of section 1004 the  
11 following paragraph:

12 “(42) The terms ‘owner’, ‘operator’, ‘generator’,  
13 and ‘transporter’ do not include a person who would  
14 not be an owner or operator within the meaning of  
15 subparagraphs (E) and (F) of section 101(20) of the  
16 Comprehensive Environmental Response, Compensa-  
17 tion, and Liability Act of 1980.”; and

18 (2) by adding at the end of section 9003(h)(9)  
19 the following sentence: “This definition shall be con-  
20 strued to be parallel and comparable to that speci-  
21 fied in section 101(20)(E) of the Comprehensive En-  
22 vironmental Response, Compensation, and Liability  
23 Act of 1980.”.

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